

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

New claims 13-19 have been added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-3 and 6-19 are now pending in this application.

Rejection under 35 U.S.C. § 102

Claims 1-3 and 7-11 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,901,992 to Kent *et al.* (hereafter “Kent”). This rejection is respectfully traversed.

Claim 1 recites a fixing device for an oil cooler in a vehicle comprising an oil cooler fixed in an oil cooler receiving element, wherein there is a latching connection between the oil cooler receiving element and the oil cooler, the latching connection centers and fixes the oil cooler in the oil cooler receiving element, and the latching connection is kept pretensioned in a desired position by an energy store, wherein the energy store is a spring store formed by at least one material tongue which is formed on the oil cooler receiving element, wherein the at least one material tongue projects from the oil cooler receiving element, wherein the at least one material tongue contacts the oil cooler to center the oil cooler in the oil cooler receiving element. Claims 2, 3, and 7-11 depend from claim 1.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally M.P.E.P. § 2131.

Kent discloses a heat exchanger or condenser 20 that includes a first header manifold 28 and a second header manifold 30 that each have projections 32. See Kent at col. 2, lines 47-67. Kent discloses a plastic bracket 34 that grips one of the manifolds 28, 30. See Kent at

col. 3, lines 6-8. The bracket 34 includes recesses 36 that are disposed about the projections 32 on the manifold to prevent the bracket 34 from moving along the manifold. See Kent at col. 3, lines 9-12. The bracket 34 also includes a pocket 38 that surrounds the manifold and a pair of flanges 40 that engage faces of the core of the heat exchanger. See Kent at col. 3, lines 19-22 and Figure 2.

However, the bracket 34 of Kent does not also include a energy store that is a spring store formed by at least one material tongue which is formed on the bracket 34, wherein the at least one material tongue projects from the bracket 34, and the at least one material tongue contacts an oil cooler to center the oil cooler in the bracket 34, as recited in claim 1. As shown in Figures 1-6 of Kent, the bracket 34 does not include at least one material tongue that projects from the bracket 34 and contacts the heat exchanger 20 to center the heat exchanger 20 in the bracket 34. For example, the flanges 40 disclosed by Kent are part of the bracket 34 are not an energy store that is a spring store and do not project from the bracket 34 to contact and center the heat exchanger, as recited in claim 1.

Kent discloses another embodiment of a bracket 134 in Figures 6-9 that includes a hinge 44 that permits the bracket 134 to open. See Kent at col. 3, lines 46-53. The bracket 134 includes snap posts 52 on one flange 40 that extend through guides 56 and snap into latch holes 54 on the other flange 40 of the bracket 134. See Kent at col. 4, lines 1-12. The Office identifies the snap posts 52 as a spring energy store on page 2 of the Office Action. However, the snap posts 52 do not project from the bracket 134 to contact the heat exchanger 20 and center the heat exchanger 20 in the bracket 134, as recited in claim 1, because the snap posts 52 do not contact the heat exchanger, as shown in Figures 6-9 of Kent.

Thus, Kent does not anticipate claims 1-3 and 7-11 because Kent fails to disclose all of the features of claim 1. Reconsideration and withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. § 103

Claims 6 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kent. This rejection is respectfully traversed.

Claims 6 and 12 depend from claim 1 and are allowable over Kent for at least the reasons discussed above because Kent does not disclose or suggest all of the features of claims 6 and 12. Thus, Kent does not render claims 6 and 12 to be unpatentable.

Additionally, the Office notes on page 3 of the Office Action that Kent does not disclose or suggest the features of claims 6 and 12 but argues that the features of claims 6 and 12 would be obvious. The Office appears to take Official Notice in regard to the features of claims 6 and 12. Applicant submits that these features are not commonly known or disclosed in the prior art relied upon by the Office. Applicant respectfully requests that the Office provide prior art to show these features or withdraw the rejection. See M.P.E.P. § 2144.03.

Furthermore, the Office argues on page 3 of the Office Action that although Kent does not disclose that the bracket 34, 134 includes a latching lug and that the manifold 28, 30 does not include a latching depression, as recited in claim 12, it would have been obvious to switch the positions of the projections 32 and recesses 36 disclosed by Kent. However, Kent does not disclose or suggest such a modification, nor does the Office provide any support in the prior art for such a modification. The Office argues on page 3 of the Office Action that such a modification would have been a “designer’s preference.” Applicant respectfully submit that “designer’s preference” is not a proper motivation or otherwise a proper basis to support a conclusion of obviousness. Applicant respectfully submits that arguing that a modification provides a “designer’s preference” is equivalent to arguing that a modification is within the capabilities of one of ordinary skill in the art, which is not sufficient to establish a *prima facie* case of obviousness. See M.P.E.P. § 2143.01, Part IV.

For at least the reasons discussed above, reconsideration and withdrawal of this rejection is respectfully requested.

New Claims

New claims 13-19 have been added. Claims 13-19 depend from claim 1 and are allowable over the prior art for at least the reasons discussed above and for their respective additional recitations.

Conclusion

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By PDS

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